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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 855

HUMBLE OIL AND REFINING COMPANY,
Petitioner,

v.

INDEPENDENT INDUSTRIAL WORKERS' UNION

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on September 9, 1964.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, is set forth on Pages 26-34 of the record and is reported at 219 F. Supp. 546. The opinion of the Court of Appeals is reported at 337 F.2d 321 and is reproduced in Appendix A to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on September 9, 1964. Petitioner filed a timely petition for rehearing, which was denied by the Court on December 21, 1964. This Court has jurisdiction to review the judgment herein by a writ of certiorari under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Under a collective bargaining agreement restricting arbitration to a "good faith claim by one party that the other party has violated a written provision of this agreement," a Union seeks arbitration of a claim that Management violated the "recognition" clause of the agreement in denying it representation at an investigation conducted by the Company.

1. Does the Court have jurisdiction to order arbitration under the recognition clause?

2. If so, should the Court order arbitration under the recognition clause where it is silent on the subject matter of the grievance and the sole obligation it imposes is to bargain in good faith?

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act 1947, 61 Stat. 156, 29 U.S.C. § 185, provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having juris

diction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

This is an action brought under Section 301 of the Labor-Management Relations Act, to compel arbitration of a grievance complaining that an employer violated a collective bargaining agreement by denying a Union the right to be represented at an investigation conducted by the Company.

The Union which brought this suit is the Independent Industrial Workers' Union, a labor organization which has been certified by the National Labor Relations Board as the bargaining agent for approximately twenty-eight hundred (2800) workers at a refinery in Baton Rouge, Louisiana. It will be referred to hereinafter as "the Union." The employer is Humble Oil & Refining Company. It will be referred to hereinafter as "the Company."

The grievance in question arose out of an investigation conducted by the Company. The Company believed that an employee may have committed a misdeed—that is, a deed for which the Company would impose discipline. The Company investigated the situation before deciding whether to impose discipline or not. The purpose of the investigation was solely to gather facts and it was completed before the Company made its decision as to what discipline, if any, to impose. The investigation included interviews with the employee suspected and with other employees. The Union is aggrieved because the Company denied its request for the Union representative to be present at these pre-grievance interviews (R. pp. 14-15 and 24-25).

The Union, after taking the matter through every step of the grievance procedure, asked that it be arbitrated, to which the Company replied that the grievance was not arbitrable under the terms and provisions of the collective bargaining agreement (R. Exhibit "B," pp. 8-9 and Exhibit "C," pp. 9-11).

On October 24, 1962, the Union filed a complaint seeking to compel arbitration of the grievance (R. p. 3). After the Company's motion to dismiss was denied (R. p. 17), the Company filed an answer (R. p. 18) and the case was submitted to the Court on an agreed stipulation of fact (R. pp. 23-26).

The District Court in its "Findings of Fact" under Articles 8, 9 and 10 (R. pp. 29-30) defined the issue as follows:

> "The Union . . . takes the position that the refusal of the Company to allow the Union representative to be present at this interview was a violation of Section 211 of the collective bargaining agreement. . . ."[1]
>
> "The Union then contends that under Section 231 of the agreement[2] . . . they have a **grievance** which is arbitrable under Section 251. . . ."[3]
>
> "The Union now seeks arbitration of **this grievance**. . . ."

And in its "Judgment" (R. p. 34) ordered the Company "to arbitrate the grievance herein involved."

On appeal, the Court of Appeals affirmed the decision of the District Court. The Company therefore stands ordered to

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[1] Section 211 is the recognition clause.

[2] Section 231 defines a grievance.

[3] Section 251 says which grievances are arbitrable.

arbitrate whether its action violated the "recognition clause," which reads as follows:

> "The Company recognizes the Union as the exclusive representative of all employees covered by this agreement for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

In short, as noted below, the Company is ordered to arbitrate whether it fulfilled its obligation to **bargain** about Union representation at a Company investigation.

REASONS FOR GRANTING THE WRIT

The decision below ordering the Company to arbitrate under the "recognition clause" should be reviewed because it is directly in conflict with the decision of this Court in *Independent Petroleum Workers of America v. American Oil Company*, Docket No. 55 (11-23-64), affirming 7 Cir., 1963, 324 F.2d 903, and because of the importance of the questions presented to all employers in the administration of their collective bargaining agreements.

1. In rejecting the Union's claim of arbitrability under the recognition clause in *Petroleum Workers, supra*, the Court pointed out that the Company's sole obligation under the recognition clause is "to bargain in good faith, an obligation imposed by the National Labor Relations Act"; and that the Union's position concerning arbitration under the recognition clause is "devoid of all logic" because, if accepted, "means that either party by alleging a refusal of the other to bargain with respect to any conceivable issue or controversy would become subject to arbitration."

Consequently, since the Company's obligation under the recognition clause—to bargain in good faith—is imposed by law and **not** by contract, the Union's claim in the case at bar that the Company violated the recognition clause does not involve the interpretation of the agreement, which is necessary in order to be eligible for arbitration, but, on the contrary, involves the interpretation and application of the National Labor Relations Act. Accordingly, exclusive jurisdiction vested in the National Labor Relations Board, and the Court below was without jurisdiction to order the Company to arbitrate under the recognition clause. In this regard, the decision of the Court below is in direct conflict with the decision of the Sixth Circuit Court of Appeal in *Timken Roller Bearing Company v. National Labor Relations Board* (1963), 325 F.2d 746, cert. den. 376 U.S. 971, and with the decision of this Court in *San Diego Building Trades Council v. Garmon* (1959), 359 U.S. 236.

2. The Court below erred in distinguishing the case at bar from the *Petroleum Workers* case, *supra*, on the basis of the difference between the no-strike provisions in the two contracts. The fact that the contract in the case at bar has an unequivocal no-strike clause is not a basis for construing the clause (Sec. 251) which defines the matters which are subject to arbitration more broadly than the comparable provision in the *Petroleum Workers* case. Mr. Justice Brennan's concurring opinion in *American Manufacturing*, 363 U.S. at 573, makes this clear. And in *Packinghouse Workers, Local 721 v. Needham Packinghouse Company* (1964), 376 U.S. 247, this Court laid to rest the "quid pro quo" doctrine. In that case, the Iowa Supreme Court applied the "quid pro quo" doctrine. It ruled that by striking in violation of the no-strike clause, the Union forfeited its right to insist upon the employer's compliance with an agreement to arbitrate. Not so, this

Court said. The no-strike clause bears no necessary relationship to an arbitration clause. This was decided in *Drake Bakeries*, and the Iowa Court's view of arbitration as an even swap for a no-strike promise is contrary to *Drake Bakeries*.

3. The Court below erred in distinguishing the case at bar from the *Petroleum Workers* case, *supra*, on the basis of the difference between the arbitration provisions in the two contracts. The distinction it seeks to draw between the two arbitration clauses begs the very questions which are presented here. The Union asserts that the Company's refusal to permit it representation at the investigation violates the "recognition clause." Thus, since the obligation under the recognition clause—to bargain—is imposed by law, it follows that the grievance does not involve interpretation of the agreement, but only the interpretation of the National Labor Relations Act. Consequently, there can be nothing to arbitrate.

4. Clearly, the questions presented are of importance to all employers in the administration of their collective bargaining agreements. Moreover, a resolution of the conflict between the decision below and the decision of this Court in the *Petroleum Workers* case is plainly in the public interest, since, if permitted to stand, the questions presented are likely to be presented in almost every proceeding involving a claim of arbitrability under the recognition clause.

CONCLUSION

For the foreging reasons, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

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APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20917

HUMBLE OIL & REFINING COMPANY,
Appellant,

versus

INDEPENDENT INDUSTRIAL WORKERS' UNION,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(September 9, 1964)

Before RIVES and JONES, Circuit Judges, and BOOTLE, District Judge.

RIVES, Circuit Judge: The Union (Plaintiff, Appellee) brought this action under Section 301 of the Labor-Manage-

ment Relations Act, 29 U.S.C.A. §185, to require Humble (Defendant, Appellant) to submit a grievance to arbitration. The district court ordered Humble to arbitrate.[1]

The question for decision is whether the contract between Humble and the Union obligates Humble to submit the grievance to arbitration.[2] The contract contains an unequivocal no-strike clause. Article 215, Work Stoppages, provides, "There shall be no lockouts or strikes." Humble's agreement to arbitrate must be construed as the "quid pro quo" for the Union's agreement not to strike, and an order to arbitrate should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." *Textile Workers v. Lincoln Mills*, 1957, 353 U.S. 448; see also *United Steelworkers of America v. Warrior & Gulf Navigation Co.* 1960, 363 U.S. 574.

The arbitration clause reads as follows:

"251. *What Grievances Are Arbitrable*

An arbitrable grievance is a good faith claim by one party that the other party has violated a written provision of this agreement. If the claim is disputed, the issue is either:

(1) The interpretation of the provision, or

(2) The facts, or both."

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[1] Its opinion is reported at 219 F.Supp. 546.

[2] Atkinson v. Sinclair Refining Co., 1962, 370 U.S. 238, 241; United Steelworkers of America v. Warrior & Gulf Navigation Co., 1960, 363 U.S. 574, 582.

Article 231 of the contract provides:

"231. *Grievance Defined*

A grievance is the situation which exists when an employee, a group of employees, or the Union feels injured, treated unfairly, or aggrieved because of the position taken by the Company (or the Company feels aggrieved because of the position taken by the Union) in regard to a matter concerning wages, hours, or working conditions."

Article 234 provides:

"234. *Employee And Union Grievance*

(a) When an employee, or the Union, has a grievance, it shall be handled in this way:

* * * * * *

(5) *Fifth Step*

If the Manager or Employee Relations does not arrange such a conference within ten days after the request is presented, or if the General Manager does not satisfy the grievance within ten days after the conference ends, *the Union may, if the grievance is arbitrable, proceed to arbitration under Article 250.*" (Emphasis supplied.)

The grievance is described in the stipulation of facts as follows:

"6.

"During the period of the contract, specifically prior to July 2, 1962, the defendant called in for interrogation

an employee named McDanell on investigation of an incident in the plant at which time the Union requested the right to be present because the investigation might result in discipline of the party being interrogated.

"7.

"The Company declined to permit a Union representative to be present to which exception was taken by the Union as a violation of the contract between the parties.

"8.

"The Union gave the defendant notice by letter dated August 10, 1962, of the Union's desire to arbitrate the grievance.

"9.

"By letter dated August 24, 1962, defendant declined to arbitrate the grievance as shown in said letter.

"10.

"The interrogation at which the Union representative was denied the right to be present was instituted by the Company to gather facts concerning a possible misdeed by one of the employees interrogated. The investigation was completed before the Company made its decisions as to what discipline, if any, to impose. The Company refused to permit the Union representative access to the interviews . . . ."

Under the contract not every grievance (Article 231, *supra*) is arbitrable, but only a grievance which amounts to "a good faith claim by one party that the other party has

violated a written provision of this agreement." (Article 251). Then, "if the claim is disputed, the issue is either: (1) The interpretation of the provision, or (2) The facts, or both."

The Union's letter demanding arbitration asserts that Humble's refusal to permit a representative to be present at the investigation "is a violation of the certification and is further a violation of Sections 211, 234 and other provisions of the contract." Section 234 has been quoted. Section 211 reads as follows:

"211. *Recognition of Union Functions*

> The Company recognizes the Union as the exclusive representative of all employees covered by this agreement for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

Section 211 must be construed in connection with its counterpart, which reads as follows:

"212. *Recognition of Management Functions*

> (a) The Union recognizes that the Company has the right, on its own initiative, to perform any function of management at any time, so long as it does not violate any express provision of of this agreement.
>
> (b) The following acts are functions of management.
>
> (1) Those acts which are not within the area of collective bargaining as required by the National Labor Relations Act, and

(2) Those acts which are usually exercised by employers, and

(3) Those acts which management should exercise in order to properly manage the business."

The district court found:

"There is no showing whatever of bad faith on the part of the Union. The language of Sections 211 and 231 particularly of the collective bargaining agreement, especially where they refer to 'other conditions of employment' and 'working conditions' is sufficiently broad to be susceptible of varying interpretations. There is, therefore, a good faith claim by one party, the Union, that the other party, the Company, has violated a written provision of the agreement. Therefore, under the clear provisions of the agreement, arbitration should be ordered, and such arbitration should be held in accordance with Sections 250 through 257 of the collective bargaining agreement pertaining specifically to arbitration procedure."

We agree with the learned district judge. The case most heavily relied upon by Humble is *Independent Petroleum Workers of America v. American Oil Co.*, 7 Cir. 1963, 324 F.2d 903. That case is readily distinguishable on a number of grounds. First and foremost, the contract there involved did not contain an unequivocal no-strike provision as here, but the no-strike clause was specifically suspendable on a refusal to arbitrate. Second, in that case arbitrable grievances related to "Questions directly involving or arising from applications, interpretations or alleged violations of the terms of this agreement." 324 F.2d at 905. That is much narrower than "a good faith claim by one party that the other party has

violated a written provision of this agreement." (Article 251, quoted *supra*.) The word "alleged" in the *Petroleum Workers* case modified only "violations," while under Article 251 of the present contract the "good faith claim" might relate to the interpretation of the written provision of the contract. There are other differences. It would unduly prolong this opinion to distinguish the other cases relied on by Humble.

Humble insists that if the Union's claim is established, it would constitute an unfair labor practice of refusal to bargain over which the National Labor Relations Board has exclusive jurisdiction. If true, that is no answer to the Union's good faith claim that Humble's conduct also constitutes a violation of a written provision of the collective bargaining agreement. *Lodge No. 12, Machinists v. Cameron Iron Works*, 5 Cir. 1958, 257 F.2d 467. The contract obligates Humble to submit the grievance to arbitration, and the judgment is

AFFIRMED.

APPENDIX B

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20917

D. C. Docket No. 2701-CA

HUMBLE OIL & REFINING COMPANY,
Appellant,

versus

INDEPENDENT INDUSTRIAL WORKERS' UNION,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before RIVES and JONES, Circuit Judges, and BOOTLE, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Humble Oil & Refining Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

September 9, 1964

Issued as Mandate:

APPENDIX C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20917

HUMBLE OIL & REFINING COMPANY,
Appellant,

versus

INDEPENDENT INDUSTRIAL WORKERS' UNION,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(December 21, 1964)

ON PETITION FOR REHEARING

Before RIVES and JONES, Circuit Judges, and BOOTLE, District Judge.

PER CURIAM:

The petition for rehearing filed by the appellant is hereby DENIED.